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 Intellectual Property Causes
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Attorney Docket No. P18435

In re application of Gary LUZIO et al.

Serial No. : 09/589,887

Group Art Unit : 1761

Filed : June 9, 2000

Examiner : PRATT, H.

For : DEESTERIFIED PECTINS, PROCESS FOR PRODUCING SUCH PECTINS, AND
 STABILIZED ACIDIC LIQUID SYSTEMS COMPRISING THE SAME

THE COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231

Sir:

Transmitted herewith is an election with traverse in the above-captioned application.

- ___ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a verified statement previously filed.
- ___ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.
- ___ A Request for Extension of Time.
- X No additional fee is required.

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The fee has been calculated as shown below:

TC 1700

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 121	*121	0	x 9=	\$	x 18=	\$0.00
Indep. Claims: 4	**4	0	x 40=	\$	x 80=	\$0.00
Multiple Dependent Claims Presented			+135=	\$	+270=	\$0.00
Extension Fees for Month				\$		\$0.00
Total:				\$	Total:	\$0.00

*If less than 20, write 20

**If less than 3, write 3

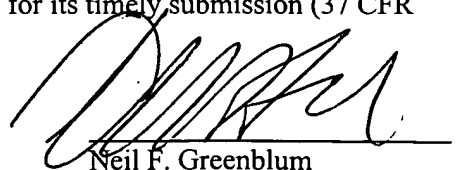
___ Please charge my Deposit Account No. 19-0089 in the amount of \$_____.

N/A A Check in the amount of \$_____ to cover the filing/extension fee is included.

X The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

X Any additional filing fees required under 37 C.F.R. 1.16.

X Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 CFR 1.136) (a)(3)


 Neil F. Greenblum
 Reg. No. 28,394

33,08

P18435.A05



Application No. 09/589,887

#6
09-26-01
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Gary LUZIO et al.

Group Art Unit: 1761

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ELECTION WITH TRAVERSE

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SEP 26 2001

TC 1700

Sir:

In response to the Restriction Requirement mailed August 24, 2001, Applicants elect the invention of Group I (claims 1-47), with traverse.

Initially, Applicants note that the Restriction Requirement indicates that Group I is directed to claim I (apparently claims 1-47) drawn to a product and process of making an enzymatically blocked-deesterified pectin, and Group II is directed to claims 48-121 drawn to a product and process of suspending insoluble components in an acidic liquid.

Applicants note that in Chapter 8 of the MPEP, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. Section 121. Section 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

Applicants respectfully submit that there is no undue burden to examine each of the pending the claims in the instant application. In this regard, although Groups I and II differ in that the process of Group I (claims 25-47) is directed to a process of producing a product and the process of Group II (claims 48-87) is directed to a process of using the product, the underlying concepts are quite similar. The process claims of both Groups I and II are directed to the same product. Thus, a search for the process claims of Group I should cover areas relevant to the process claims of Group II since it involves the same product. In other words, as a practical matter, the searches for the process claims of Groups I and II should significantly overlap. Accordingly, there is no serious search burden.

In addition, Applicants respectfully point out that the product claims of Groups II and I are related as combination-subcombination, and cannot be restricted unless two way distinctness can be shown. In particular, the product claims of Group I, as recited in independent claim 1, are directed to the subcombination of an enzymatically blocked-deesterified pectin displaying pseudoplasticity and substantially no phase separation in aqueous solution comprising at least one polyvalent cation. The product claims of Group II, as recited in independent claim 88, are directed to the combination of a stabilized acidic liquid system comprising (a) at least one enzymatically blocked-deesterified pectin that displays pseudoplasticity and substantially no phase separation in aqueous solution comprising at least one polyvalent cation; and (b) at least one acidic liquid solution.

The Examiner is reminded that where, as is the present situation, the combination/subcombination has the relationship of AB_{sp}/B_{sp} restriction is not proper. In this regard,

the Examiner's attention is directed to MPEP 806.05(c) wherein the criteria for restriction is set forth for combination/subcombination inventions.

Further, a search for the product claims of Group I should cover areas relevant to the product claims of Group II. As a practical matter, the searches for the product claims of Groups I and II should significantly overlap. Thus, there is no serious search burden.

Accordingly, Applicants respectfully request that the restriction requirement be withdrawn.

Even if the restriction requirement is maintained, Applicants note that in the Restriction Requirement, the Examiner states that the product claims will be examined along with the elected group. See page 2, lines 12-13 of the Restriction Requirement. Accordingly, it appears that all the products claims will be examined even if the requirement is maintained.

Still further, if product claims are found to be patentable, withdrawn process claims (claims 48-87 of Group II) which include the recitations of the product claims should be rejoined. The Examiner is reminded that MPEP § 821.04 states:

However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of an allowable product claim will be rejoined.

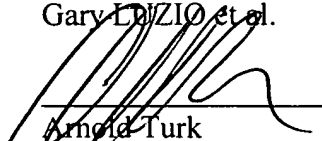
Thus, if product claims are found to be allowable, the process claims of Group II (claims 48-87) which include the product recitations of the allowed claims should be rejoined.

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If the Examiner has any questions concerning this matter or the application, the undersigned can be contacted at the below-listed telephone number.

Respectfully submitted,
Gary L. ZIO et al.


Arnold Turk
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September 24, 2001
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